

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARIO VALDIVIEZO,

Plaintiff,

ANSWER

-against-

15-CV-3902 (AJN) (HBP)

THE CITY OF NEW YORK, et al.,

Defendants.
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Defendant the City of New York,¹ by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, as and for its Answer to Plaintiff's Third Amended Complaint, dated July 26, 2016 (dkt. no. 32), respectfully alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "1" of the Third Amended Complaint, except admits that Plaintiff was a pretrial detainee in the custody of the New York City Department of Correction, housed in the George R. Verno Center at Rikers Island in August 2014.²

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "2" of the Third Amended Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the Third Amended Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the Third Amended Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the Third Amended Complaint.

¹ Defendants John Doe#1 and Jane Doe #2 have not been identified.

² A copy of Plaintiff's Third Amended Complaint, edited to include paragraph numbers, is annexed hereto as Exhibit "1." The paragraphs in Defendants' Answer correspond to the numbering in Exhibit "1".

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the Third Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Third Amended Complaint.

8. Denies the allegations set forth in paragraph “8” of the Third Amended Complaint.

9. Paragraph “9” of the Third Amended Complaint sets forth legal conclusions or general statements about Defendant to which no response is required. To the extent a response is required, Defendant denies the allegations set forth therein.

10. Paragraph “10” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

11. Paragraph “11” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

12. Paragraph “12” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Third Amended Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Third Amended Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Third Amended Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the Third Amended Complaint, except offers no response to the allegation set forth therein concerning training of medical personnel, as that allegation concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required to the allegations set forth therein concerning the training of medical personnel, Defendant denies the allegations set forth therein.

17. Denies the allegations set forth in paragraph “17” of the Third Amended Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Third Amended Complaint, except deny the allegation set forth therein that Defendant subject Plaintiff to a “health hazard environment” while housed at GRVC.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the Third Amended Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the Third Amended Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Third Amended Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Third Amended Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the Third Amended Complaint.

24. Denies the allegations set forth in paragraph “24” of the Third Amended Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph “25” of the Third Amended Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph “26” of the Third Amended Complaint.

27. Denies the allegations set forth in paragraph “27” of the Third Amended Complaint.

28. Denies the allegations set forth in paragraph “28” of the Third Amended Complaint, except denies knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff’s transfer and housing set forth therein.

29. Paragraph “29” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

30. Paragraph “30” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Third Amended Complaint.

32. Denies the allegations set forth in paragraph “32” of the Third Amended Complaint.

33. Denies the allegations set forth in paragraph “33” of the Third Amended Complaint.

34. Paragraph “34” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

35. Paragraph “35” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

36. Paragraph “36” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

37. Paragraph “37” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

38. Denies the allegations set forth in paragraph “38” of the Third Amended Complaint.

39. Denies the allegations set forth in paragraph “39” of the Third Amended Complaint.

40. Paragraph “40” of the Third Amended Complaint sets forth allegations to which no response is required, as they concerns claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed. To the extent that a response is required, Defendant denies the allegations set forth therein.

AS AND FOR A FIRST DEFENSE:

41. Plaintiff did not incur a sufficiently serious injury, nor was he subjected to a sufficiently serious deprivation of care.

AS AND FOR A SECOND DEFENSE:

42. No Defendant acted with the requisite state of mind with respect to Plaintiff’s deliberate indifference claims.

AS AND FOR A THIRD DEFENSE:

43. Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United States, the State of New York, the City of New York, or any political subdivision thereof, nor have they violated any act of Congress providing for the protection of civil rights.

AS AND FOR A FOURTH DEFENSE:

44. The individually named Defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are entitled to qualified immunity.

AS AND FOR A FIFTH DEFENSE:

45. At all relevant times, Defendants acted reasonably and in the proper and lawful exercise of their discretion and in good faith.

AS AND FOR A SIXTH DEFENSE:

46. At all times relevant to the acts alleged in the Complaint, Defendants' actions were reasonable, proper, lawful, made in good faith, and without malice.

AS AND FOR SEVENTH DEFENSE:

47. The alleged constitutional violations were not caused by any municipal policy, practice, or custom.

AS AND FOR EIGHTH DEFENSE:

48. The Third Amended Complaint sets forth claims that have been dismissed by the trial Court, and the dismissal of which has been affirmed on appeal.

AS AND FOR NINTH DEFENSE:

49. Punitive damages are not available as against the City of New York.

WHEREFORE, Defendant respectfully requests that the Third Amended Complaint be dismissed in its entirety, that the Court enter judgment for Defendant, and that Defendant be granted such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 5, 2019

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